
SUBSTITUTE HOUSE BILL 1276

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Finance (originally sponsored by Representatives Carrell, Sheldon, Morris, Quall, Koster, Smith, Mulliken, Sherstad, Crouse, D. Sommers and Backlund)

Read first time 02/04/98. Referred to Committee on .

1 AN ACT Relating to the taxation of physical fitness services;
2 amending RCW 82.04.050; adding a new section to chapter 43.135 RCW; and
3 providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.04.050 and 1997 c 127 s 1 are each amended to read
6 as follows:

7 (1) "Sale at retail" or "retail sale" means every sale of tangible
8 personal property (including articles produced, fabricated, or
9 imprinted) to all persons irrespective of the nature of their business
10 and including, among others, without limiting the scope hereof, persons
11 who install, repair, clean, alter, improve, construct, or decorate real
12 or personal property of or for consumers other than a sale to a person
13 who presents a resale certificate under RCW 82.04.470 and who:

14 (a) Purchases for the purpose of resale as tangible personal
15 property in the regular course of business without intervening use by
16 such person; or

17 (b) Installs, repairs, cleans, alters, imprints, improves,
18 constructs, or decorates real or personal property of or for consumers,
19 if such tangible personal property becomes an ingredient or component

1 of such real or personal property without intervening use by such
2 person; or

3 (c) Purchases for the purpose of consuming the property purchased
4 in producing for sale a new article of tangible personal property or
5 substance, of which such property becomes an ingredient or component or
6 is a chemical used in processing, when the primary purpose of such
7 chemical is to create a chemical reaction directly through contact with
8 an ingredient of a new article being produced for sale; or

9 (d) Purchases for the purpose of consuming the property purchased
10 in producing ferrosilicon which is subsequently used in producing
11 magnesium for sale, if the primary purpose of such property is to
12 create a chemical reaction directly through contact with an ingredient
13 of ferrosilicon; or

14 (e) Purchases for the purpose of providing the property to
15 consumers as part of competitive telephone service, as defined in RCW
16 82.04.065. The term shall include every sale of tangible personal
17 property which is used or consumed or to be used or consumed in the
18 performance of any activity classified as a "sale at retail" or "retail
19 sale" even though such property is resold or utilized as provided in
20 (a), (b), (c), (d), or (e) of this subsection following such use. The
21 term also means every sale of tangible personal property to persons
22 engaged in any business which is taxable under RCW 82.04.280 (2) and
23 (7) and 82.04.290.

24 (2) The term "sale at retail" or "retail sale" shall include the
25 sale of or charge made for tangible personal property consumed and/or
26 for labor and services rendered in respect to the following:

27 (a) The installing, repairing, cleaning, altering, imprinting, or
28 improving of tangible personal property of or for consumers, including
29 charges made for the mere use of facilities in respect thereto, but
30 excluding sales of laundry service to members by nonprofit associations
31 composed exclusively of nonprofit hospitals, and excluding services
32 rendered in respect to live animals, birds and insects;

33 (b) The constructing, repairing, decorating, or improving of new or
34 existing buildings or other structures under, upon, or above real
35 property of or for consumers, including the installing or attaching of
36 any article of tangible personal property therein or thereto, whether
37 or not such personal property becomes a part of the realty by virtue of
38 installation, and shall also include the sale of services or charges

1 made for the clearing of land and the moving of earth excepting the
2 mere leveling of land used in commercial farming or agriculture;

3 (c) The charge for labor and services rendered in respect to
4 constructing, repairing, or improving any structure upon, above, or
5 under any real property owned by an owner who conveys the property by
6 title, possession, or any other means to the person performing such
7 construction, repair, or improvement for the purpose of performing such
8 construction, repair, or improvement and the property is then
9 reconveyed by title, possession, or any other means to the original
10 owner;

11 (d) The sale of or charge made for labor and services rendered in
12 respect to the cleaning, fumigating, razing or moving of existing
13 buildings or structures, but shall not include the charge made for
14 janitorial services; and for purposes of this section the term
15 "janitorial services" shall mean those cleaning and caretaking services
16 ordinarily performed by commercial janitor service businesses
17 including, but not limited to, wall and window washing, floor cleaning
18 and waxing, and the cleaning in place of rugs, drapes and upholstery.
19 The term "janitorial services" does not include painting, papering,
20 repairing, furnace or septic tank cleaning, snow removal or
21 sandblasting;

22 (e) The sale of or charge made for labor and services rendered in
23 respect to automobile towing and similar automotive transportation
24 services, but not in respect to those required to report and pay taxes
25 under chapter 82.16 RCW;

26 (f) The sale of and charge made for the furnishing of lodging and
27 all other services by a hotel, rooming house, tourist court, motel,
28 trailer camp, and the granting of any similar license to use real
29 property, as distinguished from the renting or leasing of real
30 property, and it shall be presumed that the occupancy of real property
31 for a continuous period of one month or more constitutes a rental or
32 lease of real property and not a mere license to use or enjoy the same;

33 (g) The sale of or charge made for tangible personal property,
34 labor and services to persons taxable under (a), (b), (c), (d), (e),
35 and (f) of this subsection when such sales or charges are for property,
36 labor and services which are used or consumed in whole or in part by
37 such persons in the performance of any activity defined as a "sale at
38 retail" or "retail sale" even though such property, labor and services
39 may be resold after such use or consumption. Nothing contained in this

1 subsection shall be construed to modify subsection (1) of this section
2 and nothing contained in subsection (1) of this section shall be
3 construed to modify this subsection.

4 (3) The term "sale at retail" or "retail sale" shall include the
5 sale of or charge made for personal, business, or professional services
6 including amounts designated as interest, rents, fees, admission, and
7 other service emoluments however designated, received by persons
8 engaging in the following business activities:

9 (a) Amusement and recreation services including but not limited to
10 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips
11 for sightseeing purposes, and others, when provided to consumers;

12 (b) Abstract, title insurance, and escrow services;

13 (c) Credit bureau services;

14 (d) Automobile parking and storage garage services;

15 (e) Landscape maintenance and horticultural services but excluding
16 (i) horticultural services provided to farmers and (ii) pruning,
17 trimming, repairing, removing, and clearing of trees and brush near
18 electric transmission or distribution lines or equipment, if performed
19 by or at the direction of an electric utility;

20 (f) Service charges associated with tickets to professional
21 sporting events; and

22 (g) The following personal services: (~~Physical—fitness~~
23 ~~services,~~) Tanning salon services, tattoo parlor services, steam bath
24 services, turkish bath services, escort services, and dating services.

25 (4) The term shall also include the renting or leasing of tangible
26 personal property to consumers and the rental of equipment with an
27 operator.

28 (5) The term shall also include the providing of telephone service,
29 as defined in RCW 82.04.065, to consumers.

30 (6) The term shall not include the sale of or charge made for labor
31 and services rendered in respect to the building, repairing, or
32 improving of any street, place, road, highway, easement, right of way,
33 mass public transportation terminal or parking facility, bridge,
34 tunnel, or trestle which is owned by a municipal corporation or
35 political subdivision of the state or by the United States and which is
36 used or to be used primarily for foot or vehicular traffic including
37 mass transportation vehicles of any kind.

38 (7) The term shall also not include sales of chemical sprays or
39 washes to persons for the purpose of postharvest treatment of fruit for

1 the prevention of scald, fungus, mold, or decay, nor shall it include
2 sales of feed, seed, seedlings, fertilizer, agents for enhanced
3 pollination including insects such as bees, and spray materials to:
4 (a) Persons who participate in the federal conservation reserve
5 program, the environmental quality incentives program, the wetlands
6 reserve program, and the wildlife habitat incentives program, or their
7 successors administered by the United States department of agriculture;
8 (b) farmers for the purpose of producing for sale any agricultural
9 product; and (c) farmers acting under cooperative habitat development
10 or access contracts with an organization exempt from federal income tax
11 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
12 fish and wildlife to produce or improve wildlife habitat on land that
13 the farmer owns or leases.

14 (8) The term shall not include the sale of or charge made for labor
15 and services rendered in respect to the constructing, repairing,
16 decorating, or improving of new or existing buildings or other
17 structures under, upon, or above real property of or for the United
18 States, any instrumentality thereof, or a county or city housing
19 authority created pursuant to chapter 35.82 RCW, including the
20 installing, or attaching of any article of tangible personal property
21 therein or thereto, whether or not such personal property becomes a
22 part of the realty by virtue of installation. Nor shall the term
23 include the sale of services or charges made for the clearing of land
24 and the moving of earth of or for the United States, any
25 instrumentality thereof, or a county or city housing authority. Nor
26 shall the term include the sale of services or charges made for
27 cleaning up for the United States, or its instrumentalities,
28 radioactive waste and other byproducts of weapons production and
29 nuclear research and development.

30 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.135 RCW
31 to read as follows:

32 RCW 43.135.035 does not apply to the exemption from sales and use
33 taxation and subsequent increase in business and occupation taxation
34 resulting from the 1998, chapter . . . , Laws of 1998 (this act)
35 amendment to RCW 82.04.050.

1 NEW SECTION. **Sec. 3.** This act takes effect July 1, 1998.

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